

IC 33-3-5

Chapter 5. Tax Court

IC 33-3-5-1

Indiana tax court; establishment

Sec. 1. The Indiana tax court is established. The tax court is a court of record.

As added by P.L.291-1985, SEC.1. Amended by P.L.3-1989, SEC.191.

IC 33-3-5-2

Jurisdiction; county of hearing; election by taxpayer

Sec. 2. (a) The tax court is a court of limited jurisdiction. The tax court has exclusive jurisdiction over any case that arises under the tax laws of this state and that is an initial appeal of a final determination made by:

- (1) the department of state revenue with respect to a listed tax (as defined in IC 6-8.1-1-1); or
- (2) the Indiana board of tax review.

(b) The tax court also has:

- (1) any other jurisdiction conferred by statute; and
- (2) exclusive jurisdiction over any case that was an initial appeal of a final determination made by the state board of tax commissioners before January 1, 2002.

(c) The cases over which the tax court has exclusive original jurisdiction are referred to as original tax appeals in this chapter. The tax court does not have jurisdiction over a case unless:

- (1) the case is an original tax appeal; or
- (2) the tax court has otherwise been specifically assigned jurisdiction by statute.

(d) A taxpayer that appeals to the tax court shall, at the time the appeal is filed, elect to have all evidentiary hearings in the appeal conducted in one (1) of the following counties:

- (1) Allen County.
- (2) Jefferson County.
- (3) Lake County.
- (4) Marion County.
- (5) St. Joseph County.
- (6) Vanderburgh County.
- (7) Vigo County.

(e) A taxpayer that is an appellee in an appeal to the tax court shall, within thirty (30) days after it receives notice of the appeal, elect to have all evidentiary hearings in the appeal conducted in a county listed in subsection (d).

(f) The tax court does not have jurisdiction over a case that is an appeal from a final determination made by the department of state revenue under IC 4-32 other than a final determination concerning the gaming card excise tax established under IC 4-32-15.

As added by P.L.291-1985, SEC.1. Amended by P.L.59-1990, SEC.4; P.L.24-1992, SEC.59; P.L.198-2001, SEC.98.

IC 33-3-5-2.5a

Tax court orders to provide information

Note: This version of section effective until 3-27-2002. See also following version of this section, effective 3-27-2002.

Sec. 2.5. (a) As used in this section, "qualifying county" means a county having a population of more than four hundred thousand (400,000) and less than seven hundred thousand (700,000).

(b) As used in this section, "contractor" means the general reassessment contractor of the department of local government finance under IC 6-1.1-4-32.

(c) Upon petition from:

(1) the department of local government finance; or

(2) the contractor;

the tax court may order a township assessor in a qualifying county or a county assessor of a qualifying county to produce information requested in writing from the township assessor or county assessor by the department of local government finance or the contractor.

(d) If the tax court orders a township assessor or county assessor to provide requested information as described in subsection (c), the tax court shall order production of the information not later than fourteen (14) days after the date of the tax court's order.

(e) The tax court may find that any willful violation of this section by a township assessor or county assessor constitutes a direct contempt of the tax court.

As added by P.L.151-2001, SEC.8. Amended by P.L.1-2002, SEC.131.

IC 33-3-5-2.5b

Tax court orders to provide information

Note: This version of section effective 3-27-2002. See also preceding version of this section, effective until 3-27-2002.

Sec. 2.5. (a) As used in this section, "qualifying county" means a county having a population of more than four hundred thousand (400,000) and less than seven hundred thousand (700,000).

(b) As used in this section, "contractor" means a general reassessment, general reassessment review, or special reassessment contractor of the department of local government finance under IC 6-1.1-4-32.

(c) As used in this section, "qualifying official" refers to any of the following:

(1) A county assessor of a qualifying county.

(2) A township assessor of a qualifying county.

(3) The county auditor of a qualifying county.

(4) The treasurer of a qualifying county.

(5) The county surveyor of a qualifying county.

(6) A member of the land valuation committee in a qualifying county.

(7) Any other township or county official in a qualifying county who has possession or control of information necessary or useful for a general reassessment, general reassessment review, or special reassessment of property to which IC 6-1.1-4-32 applies, including information in the possession or control of an employee

or a contractor of the official.

(8) Any county official in a qualifying county who has control, review, or other responsibilities related to paying claims of a contractor submitted for payment under IC 6-1.1-4-32.

(d) Upon petition from the department of local government finance or a contractor, the tax court may order a qualifying official to produce information requested in writing from the qualifying official by the department of local government finance or the contractor.

(e) If the tax court orders a qualifying official to provide requested information as described in subsection (d), the tax court shall order production of the information not later than fourteen (14) days after the date of the tax court's order.

(f) The tax court may find that any willful violation of this section by a qualifying official constitutes a direct contempt of the tax court.
As added by P.L.151-2001, SEC.8. Amended by P.L.1-2002, SEC.131; P.L.151-2002, SEC.3; P.L.178-2002, SEC.108.

IC 33-3-5-3

Judge

Sec. 3. The tax court consists of one (1) judge.
As added by P.L.291-1985, SEC.1.

IC 33-3-5-4

Qualifications of judge

Sec. 4. The judge of the tax court must:

- (1) be a citizen of Indiana; and
- (2) have been admitted to the practice of law in Indiana for a period of at least five (5) years.

As added by P.L.291-1985, SEC.1.

IC 33-3-5-5

Term of office

Sec. 5. (a) The initial term of office of a person appointed to serve as the judge of the tax court begins on the effective date of that appointment and ends on the date of the next general election that follows the expiration of two (2) years from the effective date of that appointment.

(b) The tax court judge may be approved or rejected for an additional term or terms in the same manner as are the justices of the supreme court under IC 33-2.1-2.
As added by P.L.291-1985, SEC.1. Amended by P.L.185-1986, SEC.1.

IC 33-3-5-6

Vacancy

Sec. 6. (a) Except as otherwise provided in this section, a vacancy on the tax court shall be filled as provided in IC 33-2.1-4.

(b) Before the expiration of the sixty (60) day period prescribed by IC 33-2.1-4-10, the governor shall:

- (1) appoint to the tax court one (1) of the three (3) persons initially nominated by the judicial nominating commission; or
- (2) reject all the persons initially nominated by the commission.

If the governor does reject all the nominees, the governor shall notify the chairman of the judicial nominating commission of that action. The commission shall then submit the nominations of three (3) new candidates to the governor not later than forty (40) days after receipt of the notice. The governor shall fill the vacancy on the tax court by appointing one (1) of the new candidates within sixty (60) days from the date the names of the new candidates are submitted by the commission.

As added by P.L.291-1985, SEC.1. Amended by P.L.185-1986, SEC.2.

IC 33-3-5-7

Salary; expenses; full-time position

Sec. 7. (a) The judge of the tax court is entitled to an annual salary equal to the annual salary provided in IC 33-13-12-9 to a judge of the court of appeals. In addition, the judge of the tax court is entitled to the following:

(1) Reimbursement for traveling expenses and other expenses actually incurred in connection with the judge's duties, as provided in the state travel policies and procedures established by the department of administration and approved by the budget agency.

(2) A subsistence allowance equal to the amount provided under IC 33-13-12-9 to a judge of the court of appeals who is not the chief judge of the court of appeals.

(b) The judge of the tax court:

(1) shall devote full time to judicial duties; and

(2) may not engage in the practice of law.

(c) The state shall pay the annual salary prescribed in subsection (a) from the state general fund.

(d) The state shall furnish an automobile to the judge of the state tax court.

As added by P.L.291-1985, SEC.1. Amended by P.L.378-1987(ss), SEC.2; P.L.159-1990, SEC.1.

IC 33-3-5-8

Disqualification of judge; judge pro tempore

Sec. 8. If the judge of the tax court is disqualified from hearing a case or is incapable of exercising judicial duties with respect to the case, the chief justice of the supreme court shall appoint a judge pro tempore to sit in place of the disqualified or absent judge.

As added by P.L.291-1985, SEC.1.

IC 33-3-5-9

Principal office

Sec. 9. The tax court shall maintain its principal office in Indianapolis. The department of administration shall provide suitable facilities for the court in Indianapolis. If the court hears a case at a location outside Marion County, the executive of the county in which the court sits shall provide the court with suitable facilities.

As added by P.L.291-1985, SEC.1.

IC 33-3-5-10

Employees; clerk

Sec. 10. The tax court may employ a bailiff, clerk, reporter, clerical assistant, or any other personnel that the court needs to perform its duties. The clerk of the supreme court shall serve as the clerk of the tax court.

As added by P.L.291-1985, SEC.1. Amended by P.L.3-1989, SEC.192.

IC 33-3-5-11

Tax appeal or injunction; petition; injunction pending appeal

Sec. 11. (a) A taxpayer who wishes to initiate an original tax appeal must file a petition in the tax court to set aside the final determination of the department of state revenue or the Indiana board of tax review. If a taxpayer fails to comply with any statutory requirement for the initiation of an original tax appeal, the tax court does not have jurisdiction to hear the appeal.

(b) A taxpayer who wishes to enjoin the collection of a tax pending the original tax appeal must file a petition with the tax court to enjoin the collection of the tax. The petition must set forth a summary of:

- (1) the issues that the petitioner will raise in the original tax appeal; and
- (2) the equitable considerations for which the tax court should order the collection of the tax to be enjoined.

(c) After a hearing on the petition filed under subsection (b), the tax court may enjoin the collection of the tax pending the original tax appeal, if the tax court finds that:

- (1) the issues raised by the original tax appeal are substantial;
- (2) the petitioner has a reasonable opportunity to prevail in the original tax appeal; and
- (3) the equitable considerations favoring the enjoining of the collection of the tax outweigh the state's interests in collecting the tax pending the original tax appeal.

(d) This section does not apply to a final determination of the department of state revenue under IC 4-32 other than a final determination concerning the gaming card excise tax established under IC 4-32-15.

As added by P.L.291-1985, SEC.1. Amended by P.L.24-1992, SEC.60; P.L.90-2002, SEC.457.

IC 33-3-5-12

Small claims docket

Sec. 12. (a) The tax court shall establish a small claims docket for processing:

- (1) claims for refunds from the department of state revenue that do not exceed five thousand dollars (\$5,000) for any year; and
- (2) appeals of final determinations of assessed value made by the Indiana board of tax review that do not exceed forty-five thousand dollars (\$45,000).

(b) The tax court shall adopt rules and procedures under which cases on the small claims docket are heard and decided.

As added by P.L.291-1985, SEC.1. Amended by P.L.6-1997, SEC.200;

P.L.90-2002, SEC.458.

IC 33-3-5-13

Trial without jury; adoption of rules and procedures

Sec. 13. (a) The tax court shall try each original tax appeal without the intervention of a jury.

(b) The tax court shall adopt rules and procedures under which original tax appeals are heard and decided.

As added by P.L.291-1985, SEC.1.

IC 33-3-5-14

Scope of proceeding; law governing

Sec. 14. (a) Subject to subsection (b), with respect to determinations as to whether any issues or evidence may be heard in an original tax appeal that was not heard in the administrative hearing or proceeding, the tax court is governed by the law that applied before the creation of the tax court to appeals to trial courts of final determinations made by the department of state revenue and the state board of tax commissioners.

(b) Judicial review of disputed issues of fact must be confined to:

(1) the record of the proceeding before the Indiana board of tax review; and

(2) any additional evidence taken under section 14.5 of this chapter.

The tax court may not try the cause de novo or substitute its judgment for that of the Indiana board of tax review. Judicial review is limited to only those issues raised before the Indiana board of tax review, or otherwise described by the Indiana board of tax review, in its final determination.

(c) A person may obtain judicial review of an issue that was not raised before the Indiana board of tax review only to the extent that the:

(1) issue concerns whether a person who was required to be notified of the commencement of a proceeding under this chapter was notified in substantial compliance with the applicable law; or

(2) interests of justice would be served by judicial resolution of an issue arising from a change in controlling law occurring after the Indiana board of tax review's action.

As added by P.L.291-1985, SEC.1. Amended by P.L.198-2001, SEC.99.

IC 33-3-5-14.1

Burden of demonstrating invalidity of action; standard of review; findings; standards for granting relief

Sec. 14.1. (a) The burden of demonstrating the invalidity of an action taken by the state board of tax commissioners is on the party to the judicial review proceeding asserting the invalidity.

(b) The validity of an action taken by the state board of tax commissioners shall be determined in accordance with the standards of review provided in this section as applied to the agency action at the time it was taken.

(c) The tax court shall make findings of fact on each material issue on which the court's decision is based.

(d) The tax court shall grant relief under section 15 of this chapter only if the tax court determines that a person seeking judicial relief has been prejudiced by an action of the state board of tax commissioners that is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

(e) Subsection (d) may not be construed to change the substantive precedential law embodied in judicial decisions that are final as of January 1, 2002.

As added by P.L.178-2002, SEC.110.

IC 33-3-5-14.2

Attorney general representing officials; discovery; relief

Sec. 14.2. (a) The office of the attorney general shall represent a township assessor, a county assessor, a county auditor, a member of a county property tax assessment board of appeals, or a county property tax assessment board of appeals that:

- (1) made an original determination that is the subject of a judicial proceeding in the tax court; and
- (2) is a defendant in a judicial proceeding in the tax court.

(b) Notwithstanding representation by the office of the attorney general, the duty of discovery is on the parties to the judicial proceeding.

(c) Discovery conducted under subsection (b) shall be limited to production of documents from the administrative law judge presiding over the review under IC 6-1.1-15-3. The administrative law judge shall not be summoned to testify before the tax court unless verified proof is offered to the tax court that the impartiality of the administrative law judge was compromised concerning the review.

(d) A township assessor, a county assessor, a county auditor, a member of a county property tax assessment board of appeals, or a county property tax assessment board of appeals:

- (1) may seek relief from the tax court to establish that the Indiana board of tax review rendered a decision that was:
 - (A) an abuse of discretion;
 - (B) arbitrary and capricious;
 - (C) contrary to substantial or reliable evidence; or
 - (D) contrary to law; and
- (2) may not be represented by the office of the attorney general in an action initiated under subdivision (1).

As added by P.L.198-2001, SEC.100. Amended by P.L.178-2002, SEC.111.

IC 33-3-5-14.5

Additional evidence; remand

Sec. 14.5. (a) This section applies instead of IC 4-21.5-5-12 with

respect to judicial review of final determinations of the Indiana board of tax review.

(b) The tax court may receive evidence in addition to that contained in the record of the determination of the Indiana board of tax review only if the evidence relates to the validity of the determination at the time it was taken and is needed to decide disputed issues regarding one (1) or both of the following:

- (1) Improper constitution as a decision making body or grounds for disqualification of those taking the agency action.
- (2) Unlawfulness of procedure or decision making process.

This subsection applies only if the additional evidence could not, by due diligence, have been discovered and raised in the administrative proceeding giving rise to a proceeding for judicial review.

(c) The tax court may remand a matter to the Indiana board of tax review before final disposition of a petition for review with directions that the Indiana board of tax review conduct further factfinding or that the Indiana board of tax review prepare an adequate record, if:

- (1) the Indiana board of tax review failed to prepare or preserve an adequate record;
- (2) the Indiana board of tax review improperly excluded or omitted evidence from the record; or
- (3) a relevant law changed after the action of the Indiana board of tax review and the tax court determines that the new provision of law may control the outcome.

(d) This subsection applies if the record for a judicial review prepared under IC 6-1.1-15-6 contains an inadequate record of a site inspection. Rather than remand a matter under subsection (c), the tax court may take additional evidence not contained in the record relating only to observations and other evidence collected during a site inspection conducted by a hearing officer or other employee of the Indiana board of tax review. The evidence may include the testimony of a hearing officer only for purposes of verifying or rebutting evidence regarding the site inspection that is already contained in the record.

As added by P.L.198-2001, SEC.101.

IC 33-3-5-14.7

Repealed

(Repealed by P.L.198-2001, SEC.122.)

IC 33-3-5-14.8

Final determinations by board of tax review; burden of demonstrating invalidity; findings of fact; relief

Sec. 14.8. (a) This section applies instead of IC 4-21.5-5-14 with respect to judicial review of final determinations of the Indiana board of tax review.

(b) The burden of demonstrating the invalidity of an action taken by the Indiana board of tax review is on the party to the judicial review proceeding asserting the invalidity.

(c) The validity of an action taken by the Indiana board of tax review shall be determined in accordance with the standards of review provided in this section as applied to the agency action at the time it

was taken.

(d) The tax court shall make findings of fact on each material issue on which the court's decision is based.

(e) The tax court shall grant relief under section 15 of this chapter only if the tax court determines that a person seeking judicial relief has been prejudiced by an action of the Indiana board of tax review that is:

- (1) arbitrary, capricious, an abuse of discretion, or otherwise not in accordance with law;
- (2) contrary to constitutional right, power, privilege, or immunity;
- (3) in excess of statutory jurisdiction, authority, or limitations, or short of statutory jurisdiction, authority, or limitations;
- (4) without observance of procedure required by law; or
- (5) unsupported by substantial or reliable evidence.

(f) Subsection (e) shall not be construed to change the substantive precedential law embodied in judicial decisions that are final as of January 1, 2002.

As added by P.L.198-2001, SEC.103.

IC 33-3-5-15

Written decisions; direct appeal to supreme court

Sec. 15. (a) The tax court shall render its decisions in writing.

(b) A decision of the tax court remanding the matter of assessment of property under IC 6-1.1-15-8 to the Indiana board of tax review shall specify the issues on remand on which the Indiana board of tax review is to act.

(c) The decisions of the tax court may be appealed directly to the supreme court.

As added by P.L.291-1985, SEC.1. Amended by P.L.86-1995, SEC.10; P.L.90-2002, SEC.459.

IC 33-3-5-16

Filing fees

Sec. 16. When a complaint is filed, a taxpayer who initiates an original tax appeal shall pay to the clerk of the tax court the same fee as provided in IC 33-19-5-6 for actions in probate court.

As added by P.L.291-1985, SEC.1. Amended by P.L.192-1986, SEC.25; P.L.305-1987, SEC.22.

IC 33-3-5-17

Witness fees and mileage

Sec. 17. A witness who testifies before the tax court is entitled to receive the same fee and mileage allowance provided to witnesses who testify in a circuit court. The person who calls the witness to testify shall pay the witness fee and mileage allowance.

As added by P.L.291-1985, SEC.1.

IC 33-3-5-18

Transcript fees

Sec. 18. The tax court may fix and charge a fee for preparing, comparing, or certifying a transcript. However, the tax court's fee may not exceed the fee charged by circuit courts for the same service.

As added by P.L.291-1985, SEC.1.

IC 33-3-5-19

Fees; collection; disposition

Sec. 19. The clerk of the tax court shall collect the fees imposed under sections 16 and 18 of this chapter. The clerk shall transmit the fees to the treasurer of state. The treasurer shall deposit the fees in the state general fund.

As added by P.L.291-1985, SEC.1.

IC 33-3-5-20

Filing fee refund

Sec. 20. If a taxpayer prevails in a complaint that is placed on the small claims docket under section 12 of this chapter, the tax court shall order the refund of the taxpayer's filing fee under section 16 of this chapter from the state general fund. The auditor of state shall pay a warrant that is ordered under this section.

As added by P.L.100-1989, SEC.2.